H-2015, P-513/PA-90 ORDER APPROVING ACQUISITION OF DANUBE STOCK BY TDS EXCEPT FOR CERTAIN SHARES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Patrice M. Vick	Commissioner

In the Matter of the Joint Petition of Danube Telephone Company and Telephone and Data Systems, Inc. for Approval of the Acquisition of a Majority of the Outstanding Shares of Stock of Danube Telephone Company by TDS Telecommunications Corporation, a Wholly-owned Subsidiary of Telephone and Data Systems, Inc.

ISSUE DATE: January 31, 1991

DOCKET NO. H-2015, P-513/PA-90-628

ORDER APPROVING ACQUISITION OF DANUBE STOCK BY TDS EXCEPT FOR CERTAIN SHARES

PROCEDURAL HISTORY

Danube Telephone Company (Danube) is a Minnesota corporation providing local exchange service to approximately 430 customers in the Danube service area of southern Minnesota.

Telephone and Data Systems, Inc. is a telephone holding company which owns and operates approximately 80 independent telephone companies in 27 states. TDS Telecommunications Corporation (TDS) is a wholly-owned subsidiary of Telephone and Data Systems, Inc. Danube and TDS reached an agreement in which TDS would acquire a majority of the outstanding shares of Danube stock. TDS made an offer to Danube stockholders to buy Danube shares through the exchange of TDS common stock, or in the alternative by paying $13,350 per share. On August 28, 1990, Danube and TDS filed a joint petition seeking Commission approval of the acquisition.

On December 27, 1990, the Department of Public Service (the Department) filed its Report and Recommendation. During its investigation the Department had found that allegations of insider trading of Danube stock were under investigation by the Minnesota Department of Commerce and the Renville County Attorney. Certain former holders of Danube stock alleged that in February of 1989, before negotiations with TDS took place, highly placed Danube officials and their families had acquired stock from individuals without revealing significant "insider" information which would have influenced price.
Additional documents filed with the Commission indicated that

nine disgruntled former Danube shareholders had filed a civil suit in U.S. District Court in Minneapolis against officers of Danube Telephone Company as well as the Americana Bank of Danube. The plaintiffs alleged that the defendants had violated federal and state securities law as well as the federal racketeering law, and had committed common law fraud.

In its Report, the Department recommended that the Commission approve the acquisition of Danube stock by TDS, except for those shares which were the subject of civil suit or investigation by the Renville County Attorney or the Department of Commerce (the Disputed Shares). The Department also recommended that certain assurances and safeguards be implemented.

On January 7, 1991, TDS filed a letter regarding TDS' treatment of the Disputed Shares. In its letter, TDS stated that it would not accept tender of the twelve Disputed Shares[1] until final judgment or settlement in the District Court proceeding, or a determination by TDS that the shares were no longer the subject of any proceeding, including a civil suit.

Along with its representation letter, TDS also submitted a Consent to Representations by TDS signed by the Danube shareholders who were defendants in the District Court proceeding. These record owners of the Disputed Shares agreed and consented to TDS' representation that it would not accept tender of their shares until the matter is resolved in District Court or until TDS has determined that the shares are no longer subject to any dispute.

On January 22, 1991, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

THE ACQUISITION OF DANUBE TELEPHONE COMPANY SHARES

Minn. Stat. § 237.23 (1990) requires Commission consent to acquisition of capital stock of a telephone company. The Commission will not give its consent unless the acquisition is in the public interest. The allegations of wrongdoing regarding the

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[1] The twelve Disputed Shares consisted of nine shares which were the subject of both District Court proceedings and Department of Commerce and/or Renville County Attorney investigations, plus three shares which were only involved in the Department of Commerce and/or Renville County Attorney investigations.

acquisition of Danube shares indicate a potential impact on the financial stability of the company. Such a possibility of harm to the telephone company is an issue of concern for the Commission. The Commission must therefore carefully examine the effects of the acquisition of a majority of shares of Danube by TDS.

The share value offered by TDS to Danube shareholders was the product of negotiation and a competitive bidding process. Three other telephone companies besides TDS submitted offers for the buyout of Danube. Only after all the offers were considered did the majority of Danube shareholders vote to accept the offer of TDS. The price offered for Danube shares by TDS can therefore be considered fair and reasonable.

The Department investigated the financial health of TDS, the acquiring company. After reviewing the financial statements of TDS, the Department stated that the acquisition of Danube by TDS would not adversely impact the financial position of TDS.

It was also the Department's opinion that the acquisition of Danube by TDS would not change rates paid by ratepayers or services offered by Danube. The Commission agrees with the Department that the financial resources and management expertise which TDS offers will promote continued quality service for Danube ratepayers.

The Commission notes that neither Danube nor TDS is the subject of any state or county investigation, nor is either company a named party in the federal District Court proceeding. Allegations of wrongdoing have concerned the purchase of Danube shares by Danube insiders, and not the proposed acquisition of Danube by TDS. The plaintiffs in the federal suit, the Department of Commerce, and the Renville County attorney have all informed the Commission that they do not object to the transfer of the majority of Danube shares to TDS, so long as the safeguards enumerated later in this Order are in effect.

The Commission further notes that there has been an Agreement and Covenant Not to Sue Danube Telephone Company signed by the plaintiffs in the federal District Court proceeding. There has also been a Stipulation and Dismissal with Prejudice of Danube Telephone Company filed in the federal lawsuit. These documents indicate that Danube is free from potential liability from the civil lawsuit. This is especially significant because defendants who are found to have violated the federal racketeering law are subject to treble damages. Because Danube will not be subject to liability in the civil suit, TDS does not face the prospect of acquiring a company burdened by the obligation to pay damages. The Agreement Not to Sue and Stipulation and Dismissal are thus important safeguards for the financial well being of the acquiring company.

For the reasons stated herein, the Commission finds that the acquisition of the majority of shares of Danube Telephone Company by TDS is in the public interest, subject to the restrictions agreed to by TDS in its Letter of Representations of January 7, 1991, and compliance filings as ordered herein.

THE DISPUTED SHARES

Twelve shares of Danube stock are the subject of investigation by the Minnesota Department of Commerce and the Renville County Attorney. Nine of these shares are also the subject of litigation in federal District Court. The Department has recommended that the holders of the twelve Disputed Shares be prevented from transferring them until the shares are no longer the subject of any investigation or litigation. The Commission agrees that it is in the public interest to prevent transfer of these shares until there has been a resolution of the lawsuit and investigations. At that time, with proper safeguards, the rightful owners of the Disputed Shares will be allowed to transfer their interest.

The Commission finds that the letter of January 7, 1991 from TDS provides a valuable assurance that TDS will not accept tender of the Disputed Shares until there has been a settlement or final judgment in the District Court. Since the holders of the Disputed Shares have signed a Consent to the Representations of TDS, there is also assurance that these shares will not be transferred before questions of their rightful ownership and true value are resolved.

To ensure that TDS has properly decided when the Disputed Shares are free to transfer, the Commission will require TDS to submit compliance filings before accepting tender of the Disputed Shares. In the case of those Disputed Shares which are subject to litigation, TDS must submit a compliance filing after final judgment or settlement, informing the Commission of the resolution of issues regarding the shares. For those Disputed Shares which are subject to investigation but not litigation, TDS must submit a compliance filing if and when it determines that the shares are no longer under investigation, informing the Commission of the basis for its determination.

The Commission will also require holders of Disputed Shares which have been the subject of investigation or litigation to petition the Commission for approval to sell, transfer, or exchange their shares of Danube stock after the resolution of any litigation or investigations.

Finally, the Commission will require TDS and Danube to file a joint affidavit upon completion of the transfer of the nondisputed shares pursuant to this Order.

CONCLUSION

The Commission finds that the plan explained herein, including the enumerated safeguards, will protect the interests of both ratepayers and shareholders of Danube Telephone Company. It will allow the majority of Danube shareholders to transfer their stock immediately, without any delay of economic gain. The acquisition of Danube by TDS, which has been found to be in the best interest of ratepayers, will not be delayed. At the same time, ratepayers will be protected from any harm from investigation or litigation. There will be no premature transfers of Disputed Shares, while controversy still surrounds the ownership and value of the shares. Because the investigating agencies and civil plaintiffs have been assured by the safeguards, they have all indicated that they do not object to the transfer of the nondisputed stock at this time. This means that Danube will not be embroiled in costly and disruptive litigation concerning the transfer of shares. For these reasons, the Commission will approve the acquisition of Danube stock by TDS, with the exception of the Disputed Shares, for which the above-mentioned safeguards will apply.

ORDER

1. The acquisition of Danube stock by TDS is hereby approved, with the exception of shares which are the subject of civil litigation or Renville County or Department of Commerce investigation.

2. Within 30 days of the transfer of the shares which are not subject to litigation or investigation, TDS and Danube shall file a joint affidavit regarding the sale, indicating the details of the transfer and the date the transfer was complete.

3. Within 30 days of a final judgment or settlement of the federal District Court proceeding, File No. CV 4-90-777, TDS shall submit a compliance filing to inform the Commission of the resolution of issues regarding the disputed shares.

4. At any time that TDS determines that a formerly disputed share is no longer the subject of any civil law suit or other proceeding, in any case not covered by Paragraph 3 above, TDS shall submit a compliance filing informing the Commission of the basis of its determination.

5. Holders of stock which has been subject to investigation or

litigation referred to in the body of this Order, who wish to transfer their shares following resolution of the investigation or litigation, must petition the Commission for approval to transfer said shares.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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